

In Support of HB205

January 20, 2009

Chairman Stoker and Honorable Members:

My name is Nancy MacCracken and I am the Senior Law Clerk for the Sixth Judicial District Court in Livingston. I am here today to testify on behalf of House Bill 205.

The issue regarding service upon both the County Attorney and the Attorney General of petitions for post-conviction relief comes before our district courts regularly. Even though "letter of the law" requires service of the petition upon the Attorney General and the County Attorney with an order for both to respond, the actual practice has been for those offices to receive the petition, usually by mail, and for the Attorney General to then direct the County Attorney to respond. The Attorney General does not usually respond, unless the County Attorney has a conflict of interest. That process may qualify as conforming to the "spirit of the law", but may create an appealable issue, which is not desirable.

House Bill 205 amends Section 46-21-201, M.C.A. so that, in the event the court determines a petitioner may be entitled to relief, the court can send the petition for post-conviction relief to the County Attorney and the Attorney General, rather than having them served. This would save time and money.

"Service" requires that someone, usually a law enforcement officer or process server, physically deliver the documents and file a return of service or, in the alternative, that an acknowledgment and receipt of service accompany the documents with the request that the documents will be signed and returned to be filed. "Service" costs law enforcement time or costs the Court money paid to a process server. Acknowledgments and receipts of service cost time for the Court to prepare. The reality is that both are unnecessary because neither the County Attorney nor the Attorney General is going to ignore an order from a District Court to respond to a petition. However, as the law currently reads, we must serve both of them and they both must respond, which leads us to the amendment.

The amendment allows a District Court to send the petition to the appropriate County Attorney and the Attorney General and order either of them to respond. The Attorney General may then determine whether the Attorney General will respond or direct the county attorney to do so. This saves Judicial time and money, saves law enforcement time, deletes the possibility for appeal on that issue and brings the statute into compliance with what has become regular practice over time. I ask you to recommend passage of House Bill 205.

Thank You.

